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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,955	02/05/2004	Raymond Hopp	H593-003-PAT	5298

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/772,955

**Applicant(s)**

HOPP, RAYMOND

**Examiner**

Yvonne M. Horton

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 11 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/3/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 2 and 17-20 are objected to because of the following informalities: Claim 2 recites the limitation "the fins" and "the stop" in lines 10 and 11. There is insufficient antecedent basis for this limitation in the claim. Also, claim 2 is two sentences and a claim is required to be only sentence. Regarding claims 17-20, there is insufficient antecedent basis for "the step of orienting", "the step of elevating", "the step of restraining", and "the step of containing". In further regards to claim 17, "guar" should be --guard--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

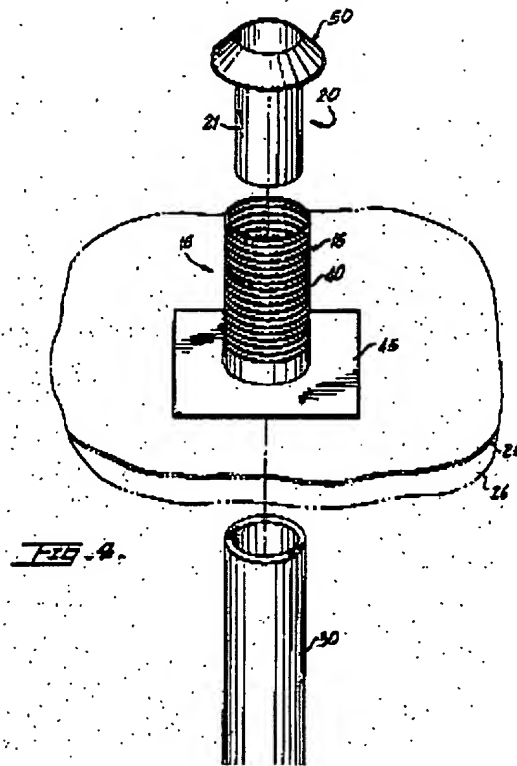
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,372,585 to EVORA. EVORA discloses a building

Art Unit: 3635

(25,26) and a side flue (30) having an interior surface (IS), a flue guard (15,20) having body (16,21) also having an interior surface (IS2, IS3), an exterior surface (ES,40), a first end (FE), a second end (SE) defining a channel, wherein the external surface (ES) is in circumferential contact of the interior surface (IS) of the flue (30). The guard (15,20) also includes fins (350 of the first end (FE) and a stop (45). EVORA discloses the use a building flue except for the flue does not extend from the side of the building. Although the flue of EVORA does not extend from te side of the building, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange/rearrange or position an element of the invention as being within the general skill of a worker in the art. In reference to claims 3-6, the flue guard (15,20) is selectively joined to the interior surface (IS) of the flue (30) in complete or at least partial circumferential contact. Regarding claim 7 and 8, the fins (35) are joined to the body of the flue (30) at the first end (FE). In reference to claim 9, the flue guard (15,20) is inherently inserted sufficiently to avoid frozen condensation. Regarding claims 10,12 and 13, the guard (15,20) includes a stop (45) positioned at a second end (SE) of the flue guard (15,20) to engage the flue (30).



Claims 14,16 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,372,585 to EVORA. EVORA discloses the method of maintaining a flue (30) including the steps of inserting a flue guard (15,20) into a flue (30) to position fins (35) thereof on a first end (FE) of the flue guard (15,20) to avoid collection of frozen condensation; positioning a stop (45) joined at the second end (SE) of the flue guard (15,20); removing the flue guard when clogged. EVORA discloses the basic claimed method except for explicitly detailing that the flue is positioned on the side of the building and except for explicitly detailing that the guard is removed for washing and reinserting the guard. Regarding the flue not being positioned on the side of the building, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange/rearrange or position an element of the invention as

Art Unit: 3635

being within the general skill of a worker in the art. With reference to the flue being washed prior to reinsertion, it too would have been obvious to one having ordinary skill in the art at the time the invention was made that the flue guard (15,20) once removed due to being clogged would be within the general skill of a worker in the art to clean and reinsert the guard. Regarding claims 16 and 18, the positioning step includes positioning an external surface (ES) of the guard (15,20) adjacent an internal surface (IS) of the flue (30) and includes elevating the guard (15,20) with respect to the flue (30). In reference to claim 17, EVORA further includes a step of orienting the channel of the guard (15,20) coaxially with the flue (30). Regarding claims 19 and 20, although EVORA is silent in this regard, it would have been obvious to one having ordinary skill in the art that the fins (35) and stop (45) of the device of EVORA are capable of restraining animals and/or their nests there between.

### ***Allowable Subject Matter***

Claims 11 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

Art Unit: 3635

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton  
Art Unit 3635  
10/03/05